

N.D.A.G. Letter to Tornes (May 30, 1989)

May 30, 1989

Mr. Gary L. Tornes
Director
Central Personnel Division
State Capitol
Bismarck, ND 58505

Dear Mr. Tornes:

Thank you for your May 10, 1989, letter, concerning the applicability of N.D.C.C. § 12.1-10-04 to administrative hearings.

N.D.C.C. § 12.1-10-04 states as follows:

12.1-10-04. Hindering proceedings by disorderly conduct.

1. A person is guilty of a class A misdemeanor if he intentionally hinders an official proceeding by noise or violence or tumultuous behavior or disturbance.
2. A person is guilty of a class B misdemeanor if he recklessly hinders an official proceeding by noise or violent or tumultuous behavior or disturbance.

N.D.C.C. § 12.1-01-04 is the general definition section for the criminal code. N.D.C.C. § 12.1-01-04(22) defines "official proceeding" as follows:

22. "Official proceeding" mean a proceeding heard or which may be heard before any government agency or branch or public servant authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding.

N.D.C.C. § 12.1-02-02 provides for the requirements of culpability. It reads, in part, as follows:

12.1-02-02. Requirements of Culpability.

1. For the purposes of this title, a person engages in conduct:
 - a. "Intentionally" if, when he engages in the conduct, it is his purpose to do so.

. . . .

- c. "Recklessly" if he engages in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct, except that, as provided in section 12.1-04-02, awareness of the risk is not required where its absence is due to self-induced intoxication.

A hearing officer or hearing examiner employed by the State Personnel Board conducting a hearing pursuant to N.D.C.C. ch. 28-32 is conducting an "official proceeding" within the meaning of N.D.C.C. § 12.1-01-04(22), 12.1-10-04. See N.D.C.C. § 28-32-05, 28-32-11. If a person is intentionally hindering an official proceeding of the State Personnel Board by noise or violent or tumultuous behavior or disturbance, or is recklessly hindering an official proceeding of the State Personnel Board by noise or violent or tumultuous behavior or disturbance, a criminal complaint may be issued against such person, and a conviction could result. However, it is a question of fact whether disorderly conduct in the official proceeding did indeed occur. Additionally, the state's attorney must make the final decision whether a criminal violation has occurred and whether a criminal complaint should be issued.

I hope this information is helpful.

Sincerely,

Nicholas J. Spaeth

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